



# TCE

Harris Bretall Sullivan & Smith L.L.C.

## INVESTMENT ADVISORY AGREEMENT

between

Harris Bretall Sullivan & Smith L.L.C., a Delaware corporation

and

Kenneth L. Lay & Linda P. Lay T1320

THIS INVESTMENT ADVISORY AGREEMENT (the "Agreement") is entered into as of the 10<sup>th</sup> day of March, 2000, between Harris Bretall Sullivan & Smith L.L.C., a Delaware corporation ("Adviser"), and the individual, corporation, partnership, trust, plan that is or may become subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or other entity set forth on the signature page below ("Client"). This Agreement shall be effective as of the later of (a) the date on which both Client and Adviser have executed this Agreement and (b) the date on which the Account (defined below) first contains any assets (such date, the "Effective Date").

1. Account. Client hereby appoints Adviser, and Adviser accepts such appointment, to act as the sole and exclusive investment adviser with respect to such cash, securities and notes as Client from time to time shall deposit or cause to be deposited with Princeton Weber Inc. (the "Specified Broker") for supervision by Adviser, together with all earnings, profits and proceeds thereon and all substitutions thereto (collectively, the "Account"). Client may make additions to the Account by depositing or causing to be deposited with the Specified Broker for supervision by Adviser additional cash, securities or notes. Client may make withdrawals from the Account upon notice to Adviser. Client understands and agrees that funds in the Account held pending investment may be temporarily invested in one or more money market mutual funds (the "Sweep Account") made available by Specified Broker (whether or not such mutual funds are managed by an affiliate of Specified Broker) selected by Client. Client, as well as all other fund shareholders, will bear a proportionate share of the expenses of those mutual funds in which Sweep Account assets are invested, including, to the extent permitted by applicable law, certain management and distribution fee expenses, certain of which are payable to Specified Broker and/or its affiliates. Client further agrees and understands that the market value of the Account used to calculate Adviser's fees as described in Paragraph 5 of this Agreement include assets in the Sweep Account.
2. Investment Discretion. Except to the extent Client otherwise instructs Adviser in writing, Client hereby grants Adviser full and exclusive discretion to manage all investments, reinvestments and other transactions for the Account as Adviser deems appropriate in furtherance of the Investment Objectives set forth on the attached client questionnaire ("Questionnaire") and subject to the Investment Restrictions set forth on the Questionnaire. Subject to any limitations set forth in the Investment Objectives and/or Investment Restrictions, Adviser shall be empowered through any of its officers or employees to (a) purchase, sell, exchange, exercise or otherwise trade for the Account any and all securities, instruments and obligations of every description, including without limitation all stocks, bonds, money market and other mutual fund shares, notes, commercial paper, trade acceptances, loans, deposits, and options or other rights to acquire any of the foregoing issued or incurred by any corporation, money market and other mutual fund, trust, partnership, association, firm, institution or governmental body and (b) take such other actions, or direct the Specified Broker to take such other actions, as any officer or employee of Adviser may deem necessary or desirable to carry out the purpose and intent of the foregoing.
3. Custodian. Client hereby notifies Adviser that Client has appointed the Specified Broker to serve as custodian for the Account. Under no circumstances shall Adviser act as a custodian of the Account. Except as provided in Paragraph 5, Adviser shall not take or receive physical possession or custody of any Account assets.

4. Specified Broker. Client hereby directs Adviser to cause all transactions for the Account to be executed through the Specified Broker. Client acknowledges that (a) Adviser will not negotiate brokerage commissions with respect to transactions executed by the Specified Broker for the Account because Client has separately negotiated a fee with Specified Broker and, as a result, Client may be paying higher commissions than those paid by clients of Adviser who have not directed Adviser to execute transactions through the Specified Broker; (b) Adviser may not be able to aggregate trades and obtain volume discounts for the Account with those of Adviser's other clients that have not directed Adviser to use the Specified Broker and therefore Client may not receive best execution with respect to certain transactions effected for the Account; and (c) a portion of Adviser's clients, including Client, are referred to Adviser by the Specified Broker and conflicts may arise between Client's interest in receiving best execution with respect to transactions effected for the Account and Adviser's interest in receiving future client referrals from the Specified Broker. Client represents to Adviser that Client has determined that the direction of the Account's brokerage to the Specified Broker is for the exclusive benefit of Client and shall not cause Client to engage in a prohibited transaction (as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) if Client is subject to ERISA.
5. Adviser's Fees. As compensation for services rendered to Client, Adviser shall receive an annual fee equal to 1.0 % of the market value of the Account. Such fee is payable quarterly in advance on (a) the first day of each calendar quarter or (b) the Effective Date in the case of the first calendar quarter. Adviser's fee for each calendar quarter during which this Agreement is in effect shall be equal to the amount obtained by multiplying (a) the market value of the Account as of the close of business on the last Business Day (as defined below) of the calendar quarter immediately preceding the date on which such fee is due and payable by (b) one-fourth (1/4th) of 1.0 %; provided, however, that for purposes of calculating Adviser's fee for the first calendar quarter or partial calendar quarter during which the Agreement is in effect, the market value of the Account shall be determined as of the opening of business on the Effective Date (or first Business Day thereafter if the Effective Date is not a Business Day). (A "Business Day" shall be any day that the New York Stock Exchange is open for trading.) If (a) the Effective Date is any day other than the first day of a calendar quarter or (b) this Agreement is terminated as of any day other than the last day of a calendar quarter, the fee that shall be payable to Adviser for such first or last calendar quarter shall be calculated as set forth in this Paragraph 5 and then prorated to reflect the number of days in such calendar quarter that the Agreement was (or will be) in effect. Adviser shall not receive compensation from Client on the basis of a share of capital gains upon or capital appreciation of the Account or any portion of the Account.
6. Payment of Adviser's Fees. Except to the extent Client otherwise instructs Adviser in writing, Client hereby authorizes Adviser to charge the Account for the full amount of Adviser's fees as such fees become due and payable; provided that Adviser sends simultaneously to Client and the Specified Broker a fee statement showing (a) the amount of the fee, (b) the market value of the Account on which the fee was based and (c) the specific manner in which the fee was calculated; and provided, further, that Client shall direct the Specified Broker to send to Client at least quarterly a statement indicating all amounts disbursed from the Account, including the amount of all fees paid to Adviser.
7. Voting of Proxies. Except to the extent that a Client notifies Adviser in writing that a named fiduciary of Client has under any applicable instrument retained discretion or delegated discretion to any other party, Client hereby authorizes and directs Adviser to vote (by proxy or otherwise) in all matters for which a shareholder vote is solicited by, or with respect to, issuers of securities beneficially held by the Account in such manner as Adviser deems appropriate in accordance with the written policies and procedures established by Adviser from time to time, copies of which policies and procedures will be made available to Client upon Client's written request. With regard to all other matters for which shareholder action is required or solicited with respect to securities beneficially held by the Account (such as all matters relating to class actions, including without limitation, matters relating to opting in or opting out of a class and approval of class settlements), Client hereby authorizes Adviser to take such action as Adviser deems appropriate, except to the extent that Client otherwise directs Adviser in writing.

8. Client's Investment Objectives and Investment Restrictions. The investments for Client by Adviser shall be governed at all times by Client's investment objectives and investment restrictions set forth on the Questionnaire and any other written instructions covering Client's investment objectives and investment restrictions delivered by Client to Adviser (collectively, the "Investment Objectives" and "Investment Restrictions," respectively). Client shall promptly advise Adviser in writing of any subsequent changes to Client's Investment Objectives or Investment Restrictions. Unless Client notifies Adviser in writing of specific Investment Restrictions, the transactions effected for the Account shall be deemed not to be restricted by any instruction of Client, or any law applicable to, or any contract or instrument binding, Client or the Account. Adviser will refrain from purchasing specific securities or categories of securities for the Account if such securities or categories of securities are Investment Restrictions. Client shall give Adviser prompt written notice if Client deems any transaction effected for the Account to be in violation of the Investment Objectives and/or the Investment Restrictions.
9. Non-Exclusive Contract.
- (a) Adviser may give advice, and take action, with respect to other Clients' accounts which may differ from the advice given, or the timing or nature of action taken, with respect to the Account. Adviser shall have no obligation to purchase or sell for the Account, or to recommend for purchase or sale by the Account, any security which Adviser, its principals, officers, directors, or employees, or any family member thereof may purchase or sell for themselves or for any other Client. Client acknowledges that Adviser and/or any of its principals, officers, directors or employees or any family members thereof may have an interest in one or more securities in which transactions are effected for the Account or in any issuer thereof.
  - (b) Client further acknowledges that Adviser may, in its sole discretion, aggregate purchases or sales of any security effected for the Account with purchases or sales, as the case may be, of the same security effected on the same day for the accounts of one or more of Adviser's other clients. When transactions are so aggregated, (a) the actual prices applicable to the aggregated transaction will be averaged, and the Account and each other account participating in the aggregated transaction shall be deemed to have purchased or sold its share of the security involved at such average price and (b) all transaction costs incurred in effecting such an aggregated transaction shall be shared on a pro rata basis among all accounts participating in such aggregated transaction.
  - (c) When recommending or effecting a transaction in a particular security for more than one client, Adviser shall allocate such recommendations or transactions among all clients for whom such recommendation is made or transaction is effected on such basis as Adviser deems equitable. Client acknowledges that, unless transactions for multiple clients are aggregated pursuant to Paragraph (b) above, transactions in a specific security may not be recommended or effected at the same time or at the same price for all client accounts for which such transaction will be recommended or effected. Nothing in this Agreement shall be deemed to require Adviser to give Client priority over any other client.
10. Confidentiality of Account Investments/Operations. Except to the extent disclosure is made pursuant to any governmental reporting requirement or otherwise required by law, all information regarding Client's identity and affairs shall be regarded as confidential by Adviser, and all information regarding investments of, and investment advice given by Adviser with respect to the Account, shall be regarded as confidential by both Adviser and Client.
11. Limitation of Liability. Adviser assumes no responsibility under this Agreement other than to render the services called for hereunder in good faith and in a professional manner. Adviser shall not be liable to Client or to Client's successors or legal representatives for (a) honest mistakes in judgment or for losses due to such mistakes or for any other loss or damage arising out of or based upon any act or omission by Adviser, including Adviser's effecting or failing to effect any transaction, unless Adviser has knowingly violated any applicable law or is adjudged to have been grossly negligent or to have engaged in willful misconduct or (b) Adviser's

failure to make any recommendation or effect any transaction for the Account on the basis of information known to Adviser where the utilization of such information could, in Adviser's opinion, constitute a violation of any applicable law, rule or regulation, or the breach of any fiduciary duty or confidential relationship between Adviser and any other person. In any event, Adviser shall not be responsible for any loss or damage incurred by reason of any act or omission of the Specified Broker. Notwithstanding the foregoing, the federal and certain state securities laws impose liabilities under certain circumstances on persons who act in good faith, and therefore nothing herein shall in any way constitute a waiver or limitation of any rights which Client may have under any federal or state securities law or ERISA, if applicable.

12. Term and Termination. This Agreement shall be effective as of the Effective Date and shall continue until terminated by Adviser or Client as provided in this Agreement. This Agreement may be terminated by Client upon written notice to Adviser. This Agreement may be terminated by Adviser upon thirty (30) days' prior written notice to Client. All actions taken by Adviser prior to the effective termination of this Agreement shall be binding upon Client and any successor or legal representative thereto. The provisions of Paragraphs 11 and 12 and any other provision in this Agreement relating to the limitation of Adviser's liability shall survive the termination of this Agreement.
13. Assignment. No assignment of this Agreement by Client shall be effective without Adviser's written consent. No assignment (as that term is defined in the Investment Advisers Act of 1940 as amended (the "Advisers Act") or in any applicable state securities law) of this Agreement by Adviser shall be effective without Client's written consent unless otherwise permitted under the Advisers Act and such state law.
14. Representations of Client. Client hereby acknowledges, represents and warrants to, and agrees with Adviser that (a) Client has full authority and power to engage Adviser under the terms and conditions of this Agreement and the engagement of Adviser pursuant to the terms of this Agreement does not violate any document or applicable law governing Client; (b) Client is the owner of all Account assets and there are no restrictions on the transfer or sale of any such Account assets; (c) Client has received Part II of Adviser's Form ADV or a written document containing at least the information contained in such Part II of Form ADV (either document, the "Form ADV Brochure") but acknowledges that if Adviser has not delivered the Form ADV Brochure to Client at least 48 hours prior to entering into this Agreement with Client, Client may terminate this Agreement in accordance with Paragraph 13 without penalty within five (5) Business Days after entering into this Agreement; provided, that any investment action taken by Adviser with respect to the Account prior to such termination shall be at Client's risk; (d) Client, either alone or with Client's independent agent, has reviewed and understands the matters set forth in this Agreement and the Form ADV Brochure and Client has received all information that it deems necessary or desirable in connection with its decision to enter into this Agreement; (e) Client acknowledges that the past performance results achieved by accounts supervised and/or managed by Adviser may not be indicative of the performance results of the Account; and (f) Client shall promptly notify Adviser in writing of any changes to the Account of which Adviser would not otherwise have knowledge. If Client is subject to the provisions of ERISA, Client further acknowledges, represents and warrants to, and agrees with Adviser that the fiduciary whose name is set forth on the signature page to this Agreement and on any exhibit hereto on behalf of Client has full authority and power to execute this Agreement on behalf of Client, and any individual whose signature is affixed to this Agreement and/or any exhibit hereto on behalf of such fiduciary has full authority and power to execute this Agreement on behalf of such fiduciary. Any such fiduciary, individual and/or Client shall promptly notify Adviser in writing of any event that could reasonably be anticipated to affect such fiduciary's or individual's authority under this Agreement.
15. Representations of Adviser. Adviser hereby acknowledges, represents and warrants to, and agrees with Client that (a) Adviser is duly registered as an investment adviser under the Advisers Act; (b) Adviser is duly registered or validly exempt from registration as an investment adviser under applicable state laws; (c) Adviser will take all actions necessary to remain duly registered or validly exempt from registration as an investment adviser under federal and applicable state laws during the term of this Agreement; and (d) if Client is subject to ERISA, Adviser acknowledges that it is a fiduciary (as defined in ERISA) with respect to Client.

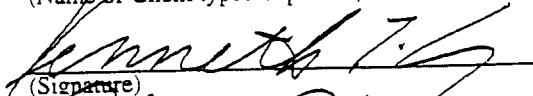
16. ERISA Bonding. If Client is subject to the provisions of ERISA, Adviser shall obtain and maintain during the term of this Agreement coverage under any bond required by ERISA or other applicable law with respect to fiduciaries for (a) Adviser and (b) any officer, director, employee or agent of Adviser whose inclusion is required by law. Client agrees to provide Adviser with any information regarding Client that Adviser shall reasonably request in order to obtain an appropriate bond.
17. Reports to Client. Adviser shall provide or cause to be provided to Client (a) notification of each transaction effected for the Account within a reasonably practicable time after such transaction has taken place and (b) statements of the Account, including the Account Value, at least quarterly. Adviser shall be reasonably available to discuss Client's individual needs during normal business hours.
18. Amendment. This Agreement may be amended only by the mutual written consent of both Client and Adviser, except as otherwise expressly provided in this Agreement, and except that Adviser may modify its fee schedule upon forty-five (45) days' notice to Client.
19. Notices and Other Communications. All notices and other communications contemplated by this Agreement shall be sufficiently given if (a) deposited, postage prepaid, in a United States mail letter box, (b) delivered personally, (c) delivered by overnight air courier or (d) communicated by telecopy, to the following address:
- If to Adviser:           Harris Bretall Sullivan & Smith LLC.  
                                  One Sansome Street, Suite 3300  
                                  San Francisco, California 94104  
                                  Facsimile: (415) 765-8397
- If to Client:             To the address set forth on the signature page to this Agreement
- or to such other address or addresses as shall be specified in a notice similarly given, or delivered to such addressee in person or by other means; provided, however, that Client may make partial withdrawals from the Account pursuant to Paragraph 1 upon oral notice to Adviser. Any such notice shall be deemed effectively given upon actual receipt, or if deposited in the United States mail, five (5) days after it is so deposited.
20. Arbitration. Client agrees that any controversy or claim, including, but not limited to, errors and omissions arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration in accordance with the Code of Commercial Arbitration of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration shall be held in the County of San Francisco, State of California.
21. Governing Law. To the extent not inconsistent with applicable federal law, this Agreement shall be construed in accordance with and governed by the laws of the State of California applicable to contracts entered into and wholly to be performed in the State of California by California residents.
22. Entire Agreement. This Agreement comprises the entire understanding and agreement between Adviser and Client as of the date of this Agreement and supersedes all prior and contemporaneous discussions, negotiations, agreements, understandings and communications with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, Client and Adviser have executed this Agreement as of the date first set forth above.

COMPLETE THE FOLLOWING SECTION  
IF CLIENT IS A NATURAL PERSON

✓ Client:

Kenneth L. Lay & Linda P. Lay  
(Name of Client typed or printed)

  
(Signature)

  
(Signature)

2/29/00  
(Date)

COMPLETE THE FOLLOWING SECTION  
IF CLIENT IS A CORPORATION, PARTNERSHIP, TRUST OR OTHER ENTITY

Client:

\_\_\_\_\_  
(Name of Client typed or printed)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & title of signatory typed or printed)

\_\_\_\_\_  
(Name & title of signatory typed or printed)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

Adviser:

Harris Bretall Sullivan & Smith L.L.C.

By: 

Name: Henry B. Dunlap Smith CFA

Title: Partner

Date: 3/10/00